

Calendar No. 951

91ST CONGRESS }
2d Session

SENATE

} REPORT
No. 91-942

KONRAD LUDWIG STAUDINGER

JUNE 24, 1970.—Ordered to be printed

MR. EASTLAND, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 737]

The Committee on the Judiciary, to which was referred the bill (S. 737) for the relief of Konrad Ludwig Staudinger, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of Konrad Ludwig Staudinger.

STATEMENT OF FACTS

The beneficiary of the bill is a 42-year-old native and citizen of Austria who has been admitted to the United States as a nonimmigrant ski instructor for each of the past 12 years for the skiing season at Sun Valley, Idaho, from December through April. The remainder of the year, he resides in Austria with his wife and three children, all natives and citizens of Austria, and is employed as a tennis instructor. He desires to enter the United States for permanent residence but has been found ineligible to receive a visa because of a conviction of involvement in a theft for which he received a 3-month suspended sentence and was placed on probation. He was subsequently granted a pardon for the conviction. Without the waiver provided for in the bill, the beneficiary will be unable to immigrate to the United States.

A letter, with attached memorandum, dated June 3, 1969, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D.C., June 3, 1969.

A-3476709.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 737) for the relief of Konrad Ludwig Staudinger, there is attached a memorandum of information concerning the beneficiary.

The bill would waive the provision of the Immigration and Nationality Act which excludes from admission into the United States aliens who have been convicted of a crime involving moral turpitude and would authorize the issuance of a visa to the beneficiary and his admission to the United States for permanent residence, if he is otherwise admissible under that act. The bill also limits the exemption granted to the beneficiary to a ground for exclusion known to the Department of State or to the Department of Justice prior to the date of its enactment.

Sincerely,

RAYMOND F. FARRELL,
Commissioner.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND
NATURALIZATION SERVICE FILES RE S. 737

The beneficiary, Konrad Ludwig Staudinger, a native and citizen of Austria, was born on July 15, 1927. He graduated from elementary school and thereafter completed a 2-year course at the University of Sport in Austria. The beneficiary is married and resides with his wife and three children in Austria. They are all natives and citizens of that country. He is employed as a tennis instructor by the Kitzbuhel Tennis Club in Austria except for the winter months of December through April, when he is employed as a ski instructor at Sun Valley, Idaho. He earns about \$6,000 a year. His assets consist of about \$6,000 in savings. The beneficiary has been employed at Sun Valley, Idaho, as a ski instructor for the last 12 years, during the period of December through April 15 each year.

The beneficiary has been admitted to the United States each of the past 12 years for the same period. His last admission was on December 4, 1968, at Chicago, Ill., as a nonimmigrant ski instructor. His nonimmigrant visa was issued in Vienna, Austria, on November 27, 1968, and was granted under waiver provisions of section 212(d) (3) (A) of the Immigration and Nationality Act.

The beneficiary was admitted as a nonimmigrant ski instructor on December 11, 1963, at Chicago, Ill., until April 6, 1964. He was granted the privilege of voluntary departure on March 30, 1964, and departed from the United States on April 8, 1964. The beneficiary at that time was found to be inadmissible at the time of entry because of a conviction for a crime involving moral turpitude. He was convicted of theft, which involved breaking and entering a building, on May 7, 1948, in Austria, and sentenced to 3 months. However, his sentence was suspended and he was placed on 3 years' probation. The crime was annulled by the Provisional Court of Innsbruck on January 29, 1959, in accordance with the Austrian amnesty law of 1950.

A letter, with attachments, dated August 26, 1969, to the chairman of the Senate Committee on the Judiciary from the Acting Assistant Secretary for Congressional Relations, U.S. Department of State, with reference to the bill reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., August 26, 1969.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for a report concerning the case of Konrad Ludwig Staudinger, beneficiary of S. 737, 91st Congress.

The bill would provide for the issuance of an immigrant visa to the beneficiary and his admission into the United States for permanent residence, notwithstanding his ineligibility to receive a visa under section 212(a) (9) of the Immigration and Nationality Act as an alien who has been convicted of a crime involving moral turpitude. The relief granted is limited to grounds for exclusion known to the Secretary of State or the Attorney General prior to enactment.

The American Embassy at Vienna, Austria, has reported that the beneficiary was born on July 15, 1927, at Innsbruck, Tyrol, Austria. He married in 1951 and has three children, all born in Austria, ranging in age from 18 to 3 years. He undertook professional training at the University of Sport at Innsbruck during 1948-49 and upon examination was certified as a ski instructor in 1950. He has been occupied as a ski and tennis instructor. He performed military service in 1944-45.

The beneficiary's police record indicates that he was convicted by the Provincial Court of Innsbruck on May 7, 1948, for larceny in the higher amount, committed by breaking or entering a building in the company of several partners. He was sentenced to 3 months' arrest; however, the sentence was suspended and he was placed on probation until May 7, 1951. He was granted a pardon for the conviction under the Austrian Amnesty Act of 1950 on March 22, 1952. Copies of the court record are enclosed.

The beneficiary has entered the United States as a temporary worker on the basis of waivers of section 212(d) (3) (A) of the act on numerous occasions since 1963, for employment as a ski instructor at Sun Valley, Idaho.

The Embassy's investigation revealed no additional derogatory information concerning the beneficiary. He was found medically qualified to receive a visa on May 20, 1969.

Sincerely yours,

H. G. TORBERT, Jr.,

Acting Assistant Secretary for Congressional Relations.

To the American Embassy, Consular Section, in Vienna I, Friedrich-Schmidt-Platz 2:

Subject: Staudinger, Konrad, born July 15, 1927, at Innsbruck.

Ref: Your request of February 13, 1964.

In the above criminal case you are according to your request furnished with one copy of the conviction and one copy of the amnesty. Since the conviction of Konrad Staudinger furthermore, upon decision of the below-mentioned court, was subject to annulment as of January 29, 1959, 10 Ns 1429/58 (and for that reason is not carried in the Austrian crime register), an annulment decision is also attached.

PROVINCIAL COURT,
Section 13, March 5, 1964.

Dr. WALTER MAIER,
Provincial Court Adviser.

[Translation]

6 Vr 256/48

IN THE NAME OF THE REPUBLIC:

The judge of the Provincial Court at Innsbruck has, during the hearing of the plaintiff's application to sentence Georg Schreder and Konrad Staudinger for crimes according to Par. 171, 173, 174(I) (d), II(a) Stg., after the main trial on May 7, 1948, during which the public prosecutor Dr. Moritz, and the defendants Georg Schreder and Konrad Staudinger were present, come up with the following finding:

The Defendants (1) Georg Schreder, born February 10, 1927, at Koessen, residing there, son of Georg and Magdalena, nee Obermoser, Roman Catholic, single, carpenter apprentice in Koessen 365, and (2) Konrad Staudinger, born July 15, 1927, at Innsbruck, residing there, son of Ursula, married Bertel, Roman Catholic, single, barber at Kitzbuehel, Kanalgasse 28, are guilty.

They have during the night of December 19, 1947, at Kitzbuehel, for their own benefit, together as burglars, taken from the possession of Josef Schett and the Seisl & Co. firm a cupboard with tools and an electric drill of a total value of considerably more than AS 500 by breaking and entering.

They have therefore committed the crime of theft according to Par. 171, 173, 174(I) (d), 174(II) (a) Stg. They will therefore according to Par. 178, 182 Stg., under consideration of Par. 54 StG and the decisions of article VI of the Crime Law Supplement of 1918 be sentenced to Georg Schreder: rigorous arrest for a period of 3½ months; Konrad Staudinger: rigorous arrest for a period of 3 months, as well as all court costs according to Par. 389 StPG for both defendants.

Both will be placed on probation for a period of 3 years, and the criminal matter will be pending until expiration of this period. According to par. 55 StG the pretrial arrest of Georg Schreder from

7 p.m. on December 19, 1947, until 6 p.m. on December 22, 1947, will be taken into consideration.

REASONING: The judge has, on the basis of official investigations and the testimony of the defendants, proven the charges as correct. Both broke and entered the Skilift station at Kitzbuehel during the night, whereby Schreder the theft accomplished and Staudinger the part of the watchman. After breaking a window pane and opening a latch from the inside Schreder entered through the window and took an electric drill and a cupboard of tools. They wanted to silver-plate the stolen goods and split the eventual profit.

This notice contains the crime of theft more vigorous, since the value of the stolen item is in excess of AS 500.

As aggravating circumstances the court found the fact that the crime was committed during the night, as well as the fact that the value of the stolen items was very high. For Schreder also the fact that he was the leader of the two and his bad reputation. As mitigating circumstances, the court found the complete testimony, the former clean record, the reimbursement of the caused loss, to a certain extent a financially bad period for them, and for Staudinger the fact that he was led into the whole affair by somebody else.

Because of the mitigating circumstances the judge furthermore applied other means which allowed him to reduce the sentence since the previous behavior was entirely different to their actions for which convicted and the judge was of the opinion that the defendants committed something without thinking of what they actually did.

The probational period is justified since it is believed that they will in the future behave properly.

Staudinger received a less rigorous sentence than Schreder because he was led into the affair. Other than that the decision is based on the appropriate laws.

PROVINCIAL COURT, INNSBRUCK,
Section 6, May 7, 1948.

Judge: Dr. Briem.

[Translation]

6 Vr 256/48
6 Hv 59/48

DECISION

The Provincial Court, Innsbruck, has after hearing the Public Prosecutor decided as follows:

The Provincial Court, Innsbruck, will on the basis of Par. 2 of the Federal Law of July 12, 1950, BGB1 No. 161 (amnesty law) annul the pending rigorous arrest for a period of 3 months for Konrad Staudinger, barber, born July 15, 1927, at Innsbruck, son of Ursula, married Strobl, residing at Kitzbuehel, Kanalgasse 28. The charge had been according to Par. 171, 173, 174 (I) (d), (II) StG.

At that time it is also mentioned that the power of law with regard to the conviction, which precludes one from taking part in elections as well as other public rights, is lifted so that the person is now free to perform and take part in all elections, etc.

PROVINCIAL COURT, INNSBRUCK,
Section 6, March 22, 1952.

S. Rept. 942

DECISION

The Provincial Court, Innsbruck, has after hearing the Public Prosecutor during session decided on the following:

The following conviction for Konrad Staudinger, born July 15, 1927, at Innsbruck, Austrian citizen, residing in Kitzbuehel, Pfarrau 22, will be annuled:

The decision of the Provincial Court, Innsbruck, of May 7, 1948, GAL. 6 Vr 256/48 for crimes according to Par. 171, 173, 174(I) (d), II(a) StG.—3 months rigorous arrest, placed on probation until May 7, 1951, will according to par. 2 of the Amnesty Law of 1950 annuled. Provincial Court, Innsbruck, March 22, 1952.

PROVINCIAL COURT, INNSBRUCK,
Section 10, January 29, 1959.

Senator Walter F. Mondale, the author of the bill, has submitted the following information in connection with the case:

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., May 7, 1969.

HON. JAMES O. EASTLAND,
Chairman, Judiciary Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Konrad Staudinger, in whose behalf I introduced private bill S. 737, is one of the great ski instructors of our day who desires to emigrate from Austria to the United States. He has been highly recommended to me by people who have known him for many years.

Mr. Staudinger is married, has three children, and is a good family man. He is 40 years old and is highly regarded both here in the United States as well as in his own country, Austria.

He has been coming to Sun Valley to teach skiing and help in the development of the mountain and runs every winter for the last 10 years. The owners of Sun Valley have been very anxious to have him come to the United States on a permanent basis because of his outstanding talents and character. Attached to this letter are articles in well-known ski magazines on his outstanding work.

Although he has applied for a visa to come here as a permanent resident, it had been denied him due to the interpretation of section 212(a) of the Immigration and Nationality Act by certain officials. In his early youth, Mr. Staudinger was convicted of a misdemeanor as an accessory to a break-in and theft. He was given a 3-month suspended sentence. This occurred in 1948, and in January 1959 his sentence was annulled and is not being carried in the Austrian register. It was his only offense, and he has since then led an exemplary life.

Under title 18 of the United States Code, section 1 (offenses classified), item (3) specifically states: "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense."

Austria has honored this great man, has annulled his sentence of 3 months' probation many years ago and is proud to acclaim him as an outstanding citizen. He has also contributed his knowledge and talent

to the United States, and I know he would become a good citizen in this country.

Mr. Chairman, I am hopeful your committee will act favorably on S. 737 so that Konrad Staudinger, notwithstanding the provisions of paragraph (9) of section 212(a) of the Immigration and Nationality Act, may be issued an immigrant visa and admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of such act.

Sincerely,

WALTER F. MONDALE.

MINNEAPOLIS, MINN., *January 10, 1968.*

HON. WALTER F. MONDALE,
*Old Senate Office Building,
Washington, D.C.*

DEAR FRITZ: I am writing to you in connection with a problem concerning one of the great ski instructors of our day who desires to emigrate from Austria to the United States. His name is Konrad Staudinger. He is now sending in his biographic data form for visa purposes, a photocopy of which is enclosed, to the U.S. Consulate in Vienna.

The enclosures relating to Konrad may be enlightening:

1. Ski Magazine, November 1967. At page 74 you will find reference to him.
2. Skiing Magazine, January 1968. At pages 80 et seq. you will find an article that is written by him.
3. A copy of the Kitzbuhel newspaper of July 22, 1967. On page 8 you will find an article concerning him.
4. Miscellany of press items, and Olympic diplomas.

I have personally known Konrad for 10 years, ever since he started to come each winter to Sun Valley. He is first rate in every regard.

Konrad is married, has three children, and is a good family man.

Everybody at Sun Valley values him very highly and the new owners, the Janss brothers, want to have him come to the United States permanently because of his outstanding ideas in the development of the mountain and the runs, etc.

What, then, is the obstacle standing in his way? It stems from a slight encounter he had with the law in Austria when he was a minor. What happened is as follows: One night a friend of his who was then staying at his house asked him to walk back to the neighboring village where the friend lived. The friend said he was going back to pick up his carpenter tools. Konrad accompanied him. It turned out that on arrival at the village the friend broke into the place where he worked and took the tool without permission. The value of the tool was about \$10 or \$20. This incident led to a charge being made against Konrad that he was an accessory to the break-in and theft. Konrad had no lawyer and was given a 3-month suspended sentence.

He was too busy playing hockey, football, skiing, etc., to write the President of Austria requesting that the police item be stricken from his record. The President of Austria, as a Christmas present, cleans up the police records for minors who so requested.

Konrad has been plagued ever since by this item on his police record. Each year he receives only a special permit to come, as a ski instructor and adviser for Sun Valley, to the United States. He has not disclosed this problem to his Sun Valley employer, keeping it to himself. He is now 40 and has led an exemplary life ever since the incident in his youth.

I would like to solicit your help to see to it that his application for a permanent visa is granted. I think that he falls within the exception to the statute, which is found in the last sentence of 8 U.S.C.A. 1182(9) which reads as follows: “* * * Any alien who would be excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, United States Code, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, United States Code, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.”

A few years ago a man, Roy Eagle, in the Helena, Mont., U.S. Immigration Office came down to see Konrad and review the police incident with Konrad. He was told all the facts. He was doing it for his chief, Mr. Hofsteter of the Helena office.

Konrad says that the man at the American consulate in Vienna with whom he has been dealing for the annual special permits is named Marvin Groeneweg.

Do you think that your office could do something to help his cause?

Please feel free to telephone me after you receive this letter if you want to talk about the matter.

Kindest regards,

Cordially,

SIDNEY BARROWS.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 737) should be enacted.

C